



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

October 30, 2007

1. Bill Number and Sponsor:

House Bills (HB) 5065, 5066, 5067, 5068, 5069, 5070, and 5073
Representatives Gary McDowell, Mark Meadows, Terry Brown, Andy Coulouris,
Rebekah Warren, Michael Sak, and Kathleen Law et al.

Senate Bills (SB) 721, 722, 723, 724, 725, 726, and 729
Senators Glenn Anderson, Samuel Thomas, Liz Brater, Mark Schauer, Deborah
Cherry, Gretchen Whitmer, and John Gleason et al.

2. Purpose:

These bills amend Part 327, Great Lakes Preservation, of the Natural Resources
and Environmental Protection Act, 1994 PA 451, as amended (NREPA), as
follows:

HB 5065 and SB 721

- Changes the definition of "index flow" to be more conservative.
- Eliminates the small container exception to the diversion prohibition.
- Modifies how separate withdrawals are aggregated.

HB 5066 and SB 722

- Mandates use of a water withdrawal assessment tool to register withdrawals.
- Eliminates the reporting and fee payment exemption for small volume users.
- Sets the water use reporting fee at \$200 and requires fee payment from the agriculture sector.
- Requires preparation of water conservation guidelines by user groups or the Department of Environmental Quality (DEQ) by default and requires owners of existing and new large quantity withdrawals to incorporate water conservation practices.
- Requires each person who makes a large quantity withdrawal to address the hydrologic impacts of the withdrawal, if needed.

HB 5067 and SB 723

- Allows citizen suits against owners of large quantity withdrawals and raises civil fines to a maximum of \$10,000 from \$1,000.

HB 5068 and SB 724

- Revises the way baseline capacity is determined.
- Expands the number of withdrawals subject to permitting by lowering volume thresholds, creating a percentage of index flow threshold, and eliminating the exemption for seasonal withdrawals.
- Requires a hydrogeological study and environmental impact assessment as part of a permit application.
- Establishes new permitting criteria.
- Establishes a 60-day public comment period on permit applications.
- Raises the permit fees.
- Requires permit renewal on a 5-year frequency.
- Lowers the legal standard for revoking a permit.

HB 5069 and SB 725

- Requires the DEQ to provide a water withdrawal assessment tool by February 28, 2008.
- Establishes fees for DEQ assistance in using the assessment tool.
- Requires annual updating of the assessment tool.
- Authorizes the DEQ to designate “sensitive water resource” areas and require permits for all large quantity withdrawals, and modify existing permits, in sensitive areas.

HB 5070 and SB 726

- Expands local water user committees to include “interested parties” and riparian owners in addition to owners of large quantity withdrawals and local government.
- Allows “interested parties” to file petitions with the DEQ alleging an adverse resource impact is occurring and requires the DEQ to investigate those allegations.
- Allows a local unit of government to enact ordinances to regulate large quantity withdrawals consistent with long-term planning.

HB 5073 and SB 729

- Authorizes the DEQ to promulgate administrative rules to implement Part 327.

3. How This Legislation Impacts Current Programs in the Department:

These bills would significantly expand DEQ authorities and responsibilities for management of water withdrawals in Michigan. Most notably, these include:

- Establishing, maintaining, and updating the water withdrawal assessment tool.
- Processing and deciding on an increased number of permit applications representing an increased proportion of all new or increased water withdrawals in Michigan.
- Conducting an expanded review of permit applications including consideration of additional technical information and additional factors, expanded public involvement, and a broadened decision-making standard.
- Considering permit renewal applications.
- Evaluating conservation measures and potentially promulgating administrative rules regarding such measures.
- Designating “sensitive water resource areas” and considering the need to modify withdrawals in those areas.
- Convening, in certain circumstances, a water users committee with an expanded membership.
- Investigating and responding to petitions alleging an adverse resource impact is occurring.
- Promulgating administrative rules to implement Part 327.

4. Introduced at Agency Request:

No.

5. Agency Support:

Yes, provided that the bills are amended to reflect a general agreement on:

- The conditions under which a water withdrawal requires public and agency consideration beyond its potential to create an adverse resource impact.
- The factors that should be considered in deciding upon the acceptability of a withdrawal.
- Program administration issues.
- The DEQ receives adequate funding to fulfill its responsibilities.

6. Justification for the Department's Position:

These bills reflect extensive conservatism in managing the effects of large quantity withdrawals. Some of the relevant provisions will increase short-term costs of, and

delay, implementation. For example, the redefinition of “index flow” would require a major reconfiguration of the water withdrawal assessment tool, requiring additional time and funding to support that work. Others would entail long-term costs for both the regulated community and the DEQ associated with preparing and processing a greater number of permit applications and applications to renew permits.

The expansion of the permit processing procedures and decision-making criteria will delay processing and create uncertainty for a person proposing a new or expanded large quantity withdrawal.

The bills impose mandatory conservation measures for all existing and new large quantity withdrawals. Given Michigan’s water regime, mandatory conservation measures are not necessary in all areas and circumstances.

The bills create extensive new responsibilities for the DEQ without providing adequate funding.

The bills will increase protection of aquatic life and water dependent natural resources.

The bills will have long-term benefits for management of Michigan’s water resources. These benefits will arise from more efficient use of water, improved planning for better use of water resources, and greater community involvement in water management decisions, creating a system that would be appropriately characterized as water stewardship.

Water stewardship will improve Michigan’s ability to ensure water remains an environmental and economic asset for present and future generations of Michigan citizens by recognizing the public’s interest in that asset and demonstrably embodying that interest in a comprehensive and effective program of management. Water stewardship will improve Michigan’s ability to successfully defend its approach against legal challenges.

Michigan’s future depends on stewardship of its water and water dependent natural resources. It is therefore prudent to develop effective means of protecting those resources for the long term and requires an explicit recognition of the public’s interest in these assets as well as careful attention to efficient use of water, improved planning for better use of water resources, and greater community involvement in water related decisions.

However, stewardship must also recognize water as a subject of private property rights and a driver of short-, as well as long-term economic activity.

Effective stewardship must balance these competing considerations. These bills are weighted to be protective. The overall effectiveness of the resulting program should also be considered in light of its impact on current and potential water users.

Ideally, the primary issues that should be broadly agreed upon by involved parties in structuring the most effective approach to stewardship are the conditions under which a water withdrawal requires public and agency consideration beyond its potential to create an adverse resource impact, and the factors that should be considered in deciding upon the acceptability of a withdrawal.

The activities comprising a stewardship program must be fully funded to be effective. Failure to provide the resources necessary for the DEQ to fulfill its responsibilities under the water stewardship program will impose unnecessary costs on involved parties, create conflict among affected interests, and reduce the protections envisioned by the legislation.

7. State Revenue/Budgetary Implications:

The legislation will significantly increase the costs of implementing the water withdrawal program. Adequate funding is not provided to implement the provisions of these bills.

8. Implications to Local Units of Government:

Local units of government would be subject to increased permitting and operational costs for water withdrawals, either directly through regulation under amendments to Part 327, or because tie-barred amendments in HB 5071/SB 727 and HB 5072/SB 728 to the Safe Drinking Water Act incorporate, by reference, some provisions of these bills.

Local units of government are given the authority to regulate large quantity withdrawals by ordinance consistent with planning. Local units of government would have to expand water users committees.

9. Administrative Rules Implications:

The bills provide authority for the DEQ to promulgate administrative rules. Administrative rules would be necessary to establish water conservation measures and may be helpful to provide greater detail on other aspects of the legislation such as permitting (e.g., permit issuance criteria and permit conditions) and designation of sensitive water resource areas.

10. Other Pertinent Information:

The bills are tie-barred to each other and to amendments to the Safe Drinking Water Act in HB 5071, SB 727, HB 5072, and SB 728.

A handwritten signature in black ink, appearing to read "S. E. Chester", written in a cursive style.

Steven E. Chester, Director
Michigan Department of Environmental Quality